

Bill No. 35-12  
Concerning: Trees - Tree Canopy  
Conservation  
Revised: 7/23/13 Draft No. 4  
Introduced: November 27, 2012  
Enacted: July 23, 2013  
Executive: \_\_\_\_\_  
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Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

### AN ACT to:

- (1) save, maintain, and establish tree canopy for the benefit of County residents and future generations;
- (2) ~~[[maximize tree canopy retention and establishment;]]~~
- ~~[[~~(3) establish procedures, standards, and requirements to minimize the loss and disturbance of tree canopy as a result of development;]]
- ~~[[~~(4)] provide for mitigation ~~[[when tree canopy is lost or disturbed]]~~ to offset the environmental impacts of development and address the loss of environmental resources, including trees and potential growing space for shade trees;
- ~~[[~~(5)] (3) establish ~~[[a fund]]~~ an account for shade tree ~~[[canopy conservation]]~~ planting projects, including plantings of individual trees~~[[,]]~~ or groups of trees~~[[, or forests,]]~~ on private and public property; and
- ~~[[~~(6)] (4) generally revise County law regarding tree canopy conservation.

### By adding

Montgomery County Code  
Chapter 55, Tree Canopy ~~[[Conservation]]~~  
Sections 55-1, 55-2, 55-3, 55-4, 55-5, 55-6, 55-7, 55-8, 55-9, 55-10, and 55-11

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

Sec. 1. Chapter 55 is added as follows:

[[Article 1. Purpose and General Provisions.

55-1. Short title.

This Chapter may be cited as the Montgomery County Tree Canopy Conservation Law.

55-2. Findings and purpose.

(a) Findings. The County Council finds that trees and tree canopy constitute important natural resources. Trees filter groundwater, reduce surface runoff, help alleviate flooding, and supply necessary habitat for wildlife. They cleanse the air, offset the heat island effects of urban development, and reduce energy needs. They improve the quality of life in communities by providing for recreation, compatibility between different land uses, and aesthetic appeal. The Council finds that tree and tree canopy loss as a result of development and other land disturbing activities is a serious problem in the County.

(b) Purpose. The purposes of this Chapter are to:

- (1) save, maintain, and establish tree canopy for the benefit of County residents and future generations;
- (2) maximize tree canopy retention and establishment;
- (3) establish procedures, standards, and requirements to minimize the loss and disturbance of tree canopy as a result of development;
- (4) provide for mitigation when tree canopy is lost or disturbed;  
and
- (5) establish a fund for tree canopy conservation projects,

*including plantings of individual trees, groups of trees, or forests, on private and public property.*

### **55-3. Definitions.**

*In this Chapter, the following terms have the meanings indicated:*

**Critical Root Zone** *means the minimum area beneath a tree. The critical root zone is typically represented by a concentric circle centering on the tree trunk with a radius equal in feet to 1.5 times the number of inches of the trunk diameter.*

**Development plan** *means a plan or an amendment to a plan approved under Division 59-D-1 of Chapter 59.*

**Director of Environmental Protection** *means the Director of the Department of Environmental Protection or the Director's designee.*

**Director of Permitting Services** *means the Director of the Department of Permitting Services or the Director's designee.*

**Forest conservation plan** *means a plan approved under Chapter 22A.*

**Forest stand delineation** *means the collection and presentation of data on the existing vegetation on a site proposed for development or land disturbing activities.*

**Land disturbing activity** *means any earth movement or land change which may result in soil erosion from water or wind or the movement of sediment into County waters or onto County lands, including tilling, clearing, grading, excavating, stripping, stockpiling, filling, and related activities, and covering land with an impermeable material.*

**Limits of disturbance** *means a clearly designated area in which land disturbance is planned to occur.*

**Limits of tree canopy disturbance** *means all areas within the limits of disturbance where tree canopy or forest exists.*

**Lot** means a tract of land, the boundaries of which have been established by subdivision of a larger parcel, and which will not be the subject of further subdivision, as defined by Section 50-1, without an approved forest stand delineation and forest conservation plan.

**Mandatory referral** means the required review by the Planning Board of projects or activities to be undertaken by government agencies or private and public utilities under Section 20-302 of the Land Use Article of the Maryland Code.

**Natural resources inventory** means a collection and presentation of data on the existing natural and environmental information on a site and the surrounding area proposed for development and land disturbing activities.

**Person** means:

(a) To the extent allowed by law, any agency or instrument of the federal government, the state, any county, municipality, or other political subdivision of the state, or any of their units;

(b) An individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind;

(c) Any partnership, firm, common ownership community or other homeowners' association, public or private corporation, or any of their affiliates or subsidiaries; or

(d) Any other entity.

**Planning Board** means the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission, or the Planning Board's designee.

**Planning Director** means the Director of the Montgomery County Planning Department or the Director's designee.

**Preliminary plan of subdivision** means a plan for a proposed subdivision or

resubdivision prepared and submitted for approval by the Planning Board under Chapter 50 before preparation of a subdivision plat.

**Project plan** means a plan or an amendment to a plan approved under Division 59-D-2 of Chapter 59.

**Public utility** means any water company, sewage disposal company, electric company, gas company, telephone company, or cable service provider.

**Qualified professional** means a licensed forester, licensed landscape architect, or other qualified professional who meets all of the requirements under Section 08.19.06.01A of the Code of Maryland Regulations or any successor regulation.

**Retention** means the deliberate holding and protecting of existing trees and forests on the site.

**Sediment control permit** means a permit required to be obtained for certain land disturbing activities under Chapter 19.

**Site** means any tract, lot, or parcel of land, or combination of tracts, lots, or parcels of land, under a single ownership, or contiguous and under diverse ownership, where development is performed as part of a unit, subdivision, or project.

**Site plan** means a plan or an amendment to a plan approved under Division 59-D-3 of Chapter 59.

**Special exception** means a use approved under Article 59-G of Chapter 59.

**Subwatershed** means the total drainage area contributing runoff to a single point, and generally refers to the 8-digit hydrologic unit codes.

**Technical Manual** means a detailed guidance document adopted under Section 55-13 and used to administer this Chapter.

**Tree** means a large, woody plant having one or several self-supporting stems or trunks and numerous branches that can grow to a height of at least

20 feet at maturity. **Tree** includes the critical root zone.

**Tree canopy** means the area of one or many crowns of the trees on a site including trees in forested areas.

**Tree Canopy Conservation Fund** means a special fund maintained by the County to be used as specified in Section 55-14.

**Tree canopy cover** means the combined area of the crowns of all trees on the site, including trees in forested areas.

**Tree canopy cover layer** means the Geographic Information System (GIS) layer, or shape file, that contains polygons outlining the aerial extent of tree canopy in the County or any portion of the County.

#### **55-4. Applicability.**

Except as otherwise provided under Section 55-5, this Chapter applies to any person required by law to obtain a sediment control permit.

#### **55-5. Exemptions.**

This Chapter does not apply to:

(a) any tree nursery activity performed with an approved Soil Conservation and Water Quality Plan as defined in Section 19-48;

(b) any commercial logging or timber harvesting operation with an approved exemption from the requirements under Article II of Chapter 22A;

(c) cutting or clearing trees in a public utility right-of-way for the construction or modification of electric generation facilities approved under the Maryland Code Public Utilities Article if:

(1) the person cutting or clearing the trees has obtained a certificate of public convenience and necessity required under Sections 7-207 and 7-208 of the Public Utilities Article; and

(2) the cutting or clearing of forest or tree canopy is conducted so as

to minimize the loss of both;

(d) routine maintenance or emergency repairs of any facility located in public utility rights-of-way;

(e) routine or emergency maintenance of an existing stormwater management facility, including an existing access road, if the person performing the maintenance has obtained all required permits;

(f) any stream restoration project if the person performing the work has obtained all necessary permits;

(g) the cutting or clearing any tree by an existing airport currently operating with all applicable permits to comply with applicable provisions of any federal law or regulation governing the obstruction of navigable airspace if the Federal Aviation Administration has determined that the trees create a hazard to aviation;

(h) cutting or clearing any tree to comply with applicable provisions of any federal, state, or local law governing the safety of dams; or

(i) any non-coal surface mining conducted in accordance with applicable state law.

**Article 2. Tree Canopy Conservation Requirements, Procedures, and Approvals.**

**55-6. Tree Canopy – General.**

(a) Submissions. A person that is subject to this Chapter must submit to either the Director of Permitting Services or the Planning Director the following information on the amount of disturbance of tree canopy.

(1) Any person required by law to obtain a sediment control permit for land disturbing activity that is not subject to Chapter 22A must submit a limits of tree canopy disturbance concurrently with the sediment control permit application to the Director of Permitting Services under Section 55-7.

(2) Any person engaging in activity that is subject to Chapter 22A must submit a limits of tree canopy disturbance concurrently with any other plan required under Chapter 22A to the Planning Director under Section 55-8.

(b) Timing of submissions. The person must submit the limits of tree canopy disturbance for review in conjunction with the review process for a sediment control permit, forest conservation plan, development plan, project plan, preliminary plan of subdivision, site plan, special exception, or mandatory referral. If a natural resources inventory/forest stand delineation is required, the person must include the aerial extent of the tree canopy with the natural resources inventory/forest stand delineation as specified in Section 22A-10.

(c) Incomplete submissions. The Director of Permitting Services or the Planning Director must not approve an incomplete submission.

(d) Review of submissions. Each submission required under this Chapter must be reviewed concurrently with the review of any submission required under Article I of Chapter 19 or Chapter 22A.

(e) Coordination of review. The Director of Permitting Services and the Planning Director may coordinate the review of any information submitted under subsection (a) with other agencies as appropriate. The reviews may be performed concurrently, and in accordance with, any review coordination required under Chapter 19 or Chapter 22A.

(f) Time frame of validity. An approved limits of tree canopy disturbance submission remains valid for:

(1) not more than 2 years unless the Planning Director has approved either a final forest conservation plan or preliminary forest conservation plan that includes the limits of tree canopy



disturbance;

(2) not more than 2 years unless a sediment control permit has been issued by the Director of Permitting Services and remains valid;

or

(3) 5 years if the accuracy of the limits of tree canopy disturbance has been verified by a qualified professional.

(g) Issuance of sediment control permit. The Director of Permitting Services must not issue a sediment control permit to a person that is required to comply with this Article until:

(1) the Planning Board or Planning Director, as appropriate, or the Director of Permitting Services has approved an applicant's limits of disturbance; and

(2) the applicant pays any fee required under this Article.

**55-7. Tree Canopy – Submissions to the Director of Permitting Services.**

(a) General. The limits of tree canopy disturbance information submitted to the Director of Permitting Services must document the extent of the existing area of tree canopy and the total area of tree canopy to be disturbed by the proposed activity.

(b) Incorporation of limits of tree canopy disturbance. The limits of tree canopy disturbance information for the subject property must be incorporated in a sediment control permit or the site plan submitted for a building permit.

(c) The limits of tree canopy disturbance. The limits of tree canopy disturbance information for the subject site must include:

(1) a map delineating:

(A) the property boundaries;

(B) the proposed limits of disturbance including any off-site

- 216 areas;
- 217 (C) the aerial extent of existing tree canopy cover on the
- 218 subject site, up to 45 feet beyond the proposed limits of
- 219 disturbance;
- 220 (D) the intersection of aerial extent of existing tree canopy
- 221 cover and the limits of disturbance; and
- 222 (E) any additional information specified by regulation; and
- 223 (2) a table summarizing the square footage of:
- 224 (A) the property;
- 225 (B) the limits of disturbance of the proposed activity;
- 226 (C) the aerial extent of existing tree canopy cover;
- 227 (D) the limits of tree canopy disturbance; and
- 228 (E) any additional information specified by regulation.
- 229 (d) Modification to limits of tree canopy disturbance. The Director of
- 230 Permitting Services may approve a modification to an approved limits
- 231 of tree canopy disturbance if:
- 232 (1) the modification is consistent with this Chapter, field inspections
- 233 or other evaluations reveal minor inadequacies of the plan, and
- 234 modifying the plan to remedy the inadequacies will not increase
- 235 the amount of tree canopy removed as shown on the final
- 236 approved plan; or
- 237 (2) the action is otherwise required in an emergency.
- 238 (e) Qualification of preparer. If a tree canopy cover layer developed by the
- 239 County is available and is used without alteration, a professional
- 240 engineer, land surveyor, architect, or other person qualified to prepare
- 241 erosion and sediment control plans under Chapter 19 is also qualified
- 242 to prepare the limits of tree canopy disturbance information under this

Section. Otherwise, the limits of tree canopy disturbance information must be prepared by a qualified professional as defined in Section 08.19.06.01 of the Code of Maryland Regulations or any successor regulation.

**55-8. Tree Canopy – Submission to the Planning Director.**

(a) General. The limits of tree canopy disturbance information submitted to the Planning Director must document the extent of existing tree canopy and the total area of tree canopy to be disturbed by the proposed activity. The Planning Director may use the information to identify the most suitable and practical areas for tree conservation and mitigation.

(b) Limits of tree canopy disturbance. A person that is subject to this Section must submit the same limits of tree canopy disturbance information as required under Section 55-7.

(c) Incorporation of the limits of tree canopy, the natural resources inventory/forest stand delineation, and forest conservation plan. If an applicant is required to submit a natural resources inventory/forest stand delineation, the extent of tree canopy must be incorporated into that submission for the same area included in the natural resources inventory/forest stand delineation. If an applicant is required to submit a forest conservation plan, both the extent of tree canopy and the limits of tree canopy disturbance must be incorporated into that submission for the same area included in the forest conservation plan.

(d) Modification to limits of tree canopy disturbance. The Planning Director may approve a modification to an approved limits of tree canopy disturbance that is consistent with this Chapter if:

(1) field inspection or other evaluation reveals minor inadequacies

of the plan, and modifying the plan to remedy those inadequacies will not increase the amount of tree canopy removed as shown on the final approved plan; or

(2) the action is required because of an emergency.

(e) Submission for special exception. If a special exception application is subject to this Chapter, the applicant must submit to the Planning Board any information necessary to satisfy the requirements of this Chapter before the Board of Appeals considers the application for the special exception.

#### **55-9. Tree Canopy – Fee to Mitigate Disturbance.**

(a) Objectives. The primary objective of this Section is the retention of existing trees. Every reasonable effort should be made to minimize the cutting or clearing of trees and other woody plants during the development of a subdivision plan, grading and sediment control activities, and implementation of the forest conservation plan.

(b) Fees paid for mitigation. Mitigation required to compensate for the loss of, or disturbance to, tree canopy must take the form of fees set by regulation under Method 3, which the applicant pays to the Tree Canopy Conservation Fund. Mitigation fees are based on the square footage of tree canopy disturbed and, therefore, increase as the amount of tree canopy disturbance increases. To provide credit for on-site landscaping, mitigation fees must not be applied to the first 5 percent of the area of tree canopy disturbed. Canopy identified as part of any forest delineated in an approved natural resources inventory/forest stand delineation and subject to a forest conservation plan is not subject to mitigation fees under this Chapter.

#### **Article 3. Enforcement and Appeals.**

**55-10. Inspections and notification.**

(a) Permission to gain access. The Director of Permitting Services or the Planning Director may enter any property subject to this Chapter to inspect, review, and enforce.

(b) Plan to be on site; field markings. A copy of the approved limits of tree canopy disturbance must be available on the site for inspection by the Director of Permitting Services or the Planning Director. Field markings must exist on site before and during installation of all tree protection measures, sediment and erosion control measures, construction, or other land disturbing activities.

(c) Inspections.

(1) The Director of Permitting Services must conduct field inspections concurrently with inspections required for a sediment control permit under Article I of Chapter 19 for any activity subject to Section 55-7.

(2) The Planning Director must conduct field inspections concurrently with inspections required for a forest conservation plan for any activity subject to Section 55-8.

(3) The Director of Permitting Services or the Planning Director may authorize additional inspections or meetings as necessary to administer this Chapter.

(d) Timing of inspections. The inspections required under this Section must occur:

(1) after the limits of disturbance have been staked and flagged, but before any clearing or grading begins;

(2) after necessary stress reduction measures for trees and roots have been completed and the protection measures have been

installed, but before any clearing or grading begins; and

(3) after all construction activities are completed, to determine the level of compliance with the limits of tree canopy disturbance.

(e) Scheduling requirements. A person must request an inspection by:

(1) the Director of Permitting Services within the time required to schedule an inspection under Section 19-12; or

(2) the Planning Director within the time required to schedule an inspection under Section 22A-15.

(f) Coordination. The Department of Permitting Services and the Planning Department must coordinate their inspections to avoid inconsistent activities relating to the limits of tree canopy disturbance.

#### **55-11. Penalties and enforcement.**

(a) Enforcement authority. The Department of Permitting Services has enforcement authority for any activity approved under Section 55-7 and the Planning Board has enforcement authority for any activity approved under Section 55-8.

(b) Enforcement action. The Director of Permitting Services or the Planning Director may issue a notice of violation, corrective order, stop-work order, or civil citation to any person that causes or allows a violation of this Chapter.

(c) Civil penalty. The maximum civil penalty for any violation of this Chapter or any regulation adopted under this Chapter is \$1,000. Each day that a violation continues is a separate offense.

(d) Other remedy. In addition to any other penalty under this Section, the Planning Board may seek any appropriate relief authorized under Section 22A-16.

#### **55-12. Administrative enforcement.**

(a) Administrative order. In addition to any other remedy allowed by law, the Planning Director may at any time, including during the pendency of an enforcement action under Section 55-11, issue an administrative order requiring the violator to take one or more of the following actions within the time specified by the Planning Director:

- (1) stop the violation;
- (2) stabilize the site to comply with a forest conservation plan;
- (3) stop all work at the site;
- (4) restore or reforest unlawfully cleared areas;
- (5) submit a limits of tree canopy disturbance, forest conservation plan, or tree save plan for the net tract area;
- (6) place forested land, reforested land, or land with individual significant trees under long-term protection by a conservation easement, deed restriction, covenant, or other appropriate legal instrument; or
- (7) submit a written report or plan concerning the violation.

(b) Effectiveness of order. An order issued under this Section is effective when it is served on the violator.

#### Article 4. Administration

##### 55-13. General.

(a) Regulations. The County Executive must adopt regulations, including technical manuals, to administer this Chapter, under Method 2. The regulations must include procedures to amend a limits of tree canopy disturbance.

(b) Technical manual. The technical manual must include guidance and methodologies for:

- (1) preparing and evaluating maps of the aerial extent of the tree

- canopy and the limits of tree canopy disturbance;
- (2) providing protective measures during and after clearing or construction, including root pruning techniques and guidance on removing trees that are or may become hazardous;
- (3) monitoring and enforcing the limits of disturbance and the limits of tree canopy disturbance; and
- (4) other appropriate guidance for program requirements consistent with this Chapter and applicable regulations.
- (c) Administrative fee. The Planning Board and the County Executive may each, by Method 3 regulation, establish a schedule of fees to administer this Chapter.
- (d) Reports. On or before March 1 of each year, the Department of Permitting Services, the Planning Board, and the Department of Environmental Protection each must submit an annual report on the County tree conservation program to the County Council and County Executive.
- (e) Comprehensive plan for mitigation. The Department of Environmental Protection must develop and maintain a comprehensive County-wide plan to mitigate disturbance to tree canopy. The Department of Environmental Protection should develop the plan in consultation with the Planning Department, the Department of Transportation, the Department of General Services, the Department of Economic Development, the Soil Conservation District, and other agencies as appropriate.
- (f) Sediment control permit application. To prevent circumvention of this Chapter, the Planning Director and the Director of Permitting Services may require a person to submit an application for a sediment



control permit enforceable under this Chapter if that person:

- (1) limits the removal of tree canopy or limits land disturbing or construction activities to below requirements for a sediment control permit; and
- (2) later disturbs additional tree canopy or land on the same property, or by any other means, such that in total, a sediment control permit would be required.

**55-14. Tree Canopy Conservation Fund.**

(a) General. There is a County Tree Canopy Conservation Fund. The Fund must be used in accordance with the adopted County budget and as provided in this Section.

(b) Mitigation fees paid into the Tree Canopy Conservation Fund. Money deposited in the Tree Canopy Conservation Fund to fulfill mitigation requirements must be spent on establishing and enhancing tree canopy, including costs directly related to site identification, acquisition, preparation, and other activities that increase tree canopy, and must not revert to the General Fund. The Fund may also be spent on permanent conservation of priority forests, including identification and acquisition of a site within the same subwatershed where the disturbance occurs.

(c) Fines paid into the Tree Canopy Conservation Fund. Any fines collected for noncompliance with a limits of tree canopy disturbance or forest conservation plan related to tree canopy disturbance must be deposited in a separate account in the Tree Canopy Conservation Fund. The Fund may be used to administer this Chapter.

(d) Use of the Tree Canopy Conservation Fund.

- (1) Any fees collected for mitigation must be used to:

- 432                    (A) establish tree canopy;  
 433                    (B) enhance existing tree canopy through non-native invasive  
 434                    and native invasive species management control,  
 435                    supplemental planting, or a combination of both;  
 436                    (C) establish forest; and  
 437                    (D) acquire protective easements for existing forests or areas  
 438                    with existing tree canopy that are not currently protected,  
 439                    including forest mitigation banks approved under Section  
 440                    22A-13.

441                    (2) The canopy established under paragraph (1)(A) should shade  
 442                    impervious surfaces, manage stormwater runoff, and generally  
 443                    increase tree canopy coverage. Trees native to the Piedmont area  
 444                    of the County should be used, if feasible, to meet the mitigation  
 445                    requirements of this Chapter.

446                    (3) The establishment of tree canopy to satisfy the mitigation  
 447                    requirements of a project must occur in the subwatershed where  
 448                    the project is located. Otherwise the tree canopy may be  
 449                    established anywhere in the County.]]

# 450                    **Article 1. Purpose and General Provisions.**

## 451                    **55-1. Short title.**

452                    This Chapter may be cited as the Montgomery County Tree Canopy Law.

## 453                    **55-2. Findings and purpose.**

454                    (a) Findings. The County Council finds that it is in the public interest to  
 455                    offset the environmental impacts of development and address the loss  
 456                    of environmental resources, including trees and potential growing  
 457                    space for shade trees, and conserve tree canopy throughout the  
 458                    County. Trees and tree canopy constitute important environmental

resources. Trees cleanse the air, offset the heat island effects of urban development, reduce energy needs, and provide oxygen. They improve the quality of life in communities by providing for a greater sense of well-being and increasing esthetic appeal and compatibility between different land uses. Trees filter groundwater, reduce surface runoff and soil erosion, help alleviate flooding, and supply necessary habitat for a diversity of wildlife. The Council finds that the damage to or loss of environmental resources as a result of development and other land disturbing activities is a serious problem in the County, and that establishing shade trees and tree canopy helps mitigate these losses and increase the diversity of species and age classes of trees. The Council finds that, given the expected survival rate of newly planted shade trees, at least 3 new shade trees should be planted to produce the canopy coverage of one mature shade tree.

(b) Purpose. The purposes of this Chapter are to:

- (1) save, maintain, and establish tree canopy for the benefit of County residents and future generations; and
- (2) provide for mitigation when environmental resources, including trees and potential growing space for shade trees, are lost or disturbed as a result of development, by establishing:
  - (A) shade tree planting requirements and standards; and
  - (B) a program to plant shade trees, including planting individual trees or groups of trees, on private and public property.

### **55-3. Definitions.**

In this Chapter, the following terms have the meanings indicated:

Department means the Department of Permitting Services.

Director means the Director of the Department of Permitting Services or the Director's designee.

Limits of disturbance means a clearly designated area where land disturbance is expected to occur.

Person means:

(a) to the extent allowed by law, any agency or instrument of the federal government, the state, any county, municipality, or other political subdivision of the state, or a unit of any of them;

(b) an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind;

(c) any partnership, firm, common ownership community or other homeowners' association, public or private corporation, or a affiliate or subsidiary of any of them; or

(d) any other entity.

Public utility means any water company, sewage disposal company, electric company, gas company, telephone company, or cable service provider.

Sediment control permit means a permit required to be obtained for certain land disturbing activities under Chapter 19.

Shade tree means a tree of large stature that is capable of growing to heights greater than 50 feet.

Site means any tract, lot, or parcel of land, or combination of tracts, lots, or parcels of land, under a single ownership, or contiguous and under diverse ownership.

Subwatershed means the total drainage area contributing runoff to a single point, and generally refers to the 8-digit hydrologic unit codes.

Technical Manual means a detailed guidance document that may be adopted under Section 55-9 and used to administer this Chapter.

513 Tree canopy means the area covered by the crown of one or more trees.

514 Tree Canopy Conservation Account means a special account maintained by  
 515 the County to be used as specified in Section 55-10.

516 **55-4. Applicability.**

517 Except as otherwise provided in Section 55-5, this Chapter applies to any  
 518 person required by law to obtain a sediment control permit.

519 **55-5. Exemptions.**

520 This Chapter does not apply to:

- 521 (a) any activity that is subject to Article II of Chapter 22A;
- 522 (b) any commercial logging or timber harvesting operation with an  
 523 approved exemption from Article II of Chapter 22A;
- 524 (c) any tree nursery activity performed with an approved Soil Conservation  
 525 and Water Quality Plan as defined in Section 19-48;
- 526 (d) cutting or clearing trees in a public utility right-of-way for the  
 527 construction or modification of electric generation facilities approved  
 528 under the Maryland Code Public Utilities Article if:
  - 529 (1) the person cutting or clearing the trees has obtained a certificate  
 530 of public convenience and necessity required under Sections 7-  
 531 207 and 7-208 of the Public Utilities Article; and
  - 532 (2) the cutting or clearing of forest or tree canopy is conducted so as  
 533 to minimize the loss of both;
- 534 (e) routine maintenance of a public utility right-of-way, and cutting or  
 535 clearing any tree by a public utility as necessary to comply with  
 536 applicable vegetation management requirements, to maintain, repair,  
 537 replace, or upgrade any public utility transmission or distribution line,  
 538 or for a new transmission or distribution line;
- 539 (f) any activity conducted by the County Parks Department;

- (g) routine or emergency maintenance of an existing stormwater management facility, including an existing access road, if the person performing the maintenance has obtained all required permits;
- (h) any stream restoration project if the person performing the work has obtained all necessary permits;
- (i) cutting or clearing any tree by an existing airport currently operating with all applicable permits to comply with applicable provisions of any federal law or regulation governing the obstruction of navigable airspace if the Federal Aviation Administration has determined that the trees create a hazard to aviation;
- (j) cutting or clearing any tree to comply with applicable provisions of any federal, state, or local law governing the safety of dams;
- (k) any development activity permitted as a small land disturbing activity under Section 19-5B; or
- (l) any non-coal surface mining conducted in accordance with applicable state law.

## **Article 2. Mitigation Requirements and Review.**

### **55-6. Shade Tree Planting.**

- (a) Alternatives. An applicant for a sediment control permit must plant shade trees on the affected property or, if the applicant opts not to plant the required number of trees, pay a fee under subsection (d).
- (b) Quantity. The number of shade trees required to be planted under this Section must be based on the square footage of the area in the limits of disturbance.
  - (1) Unless modified or superseded by applicable regulations adopted under Method 1, the number of shade trees planted must comply with the following schedule:

<u>Area (sq. ft.) of the Limits of Disturbance</u>		<u>Number of Shade Trees Required</u>
<u>From</u>	<u>To</u>	
<u>1</u>	<u>6,000</u>	<u>3</u>
<u>6,001</u>	<u>8,000</u>	<u>6</u>
<u>8,001</u>	<u>12,000</u>	<u>9</u>
<u>12,001</u>	<u>14,000</u>	<u>12</u>
<u>14,001</u>	<u>40,000</u>	<u>15</u>

(2) If the area in the limits of disturbance exceeds 40,000 square feet, the minimum number of shade trees required must be prorated using the ratio of 15 trees per 40,000 square feet.

(c) Planting. Each planting of shade trees under this Section must conform to the following requirements:

(1) Each shade tree must be allowed at least 400 square feet, unless applicable regulations adopted under Method 1 specify a smaller amount, of open surface area free of any impervious surface, utility, stormwater management system, or other impediment to root growth and development.

(2) Shade trees may be planted anywhere on the subject property, including outside the limits of disturbance if sufficient open surface area is available entirely within the property boundaries. Open surface area on an adjacent County right-of-way may be included if no utility, public utility easement, or impervious surface is located in that part of the right-of-way and the tree is located on the affected property so that its stem will not grow into the right-of-way.

(d) Fees. If the applicant concludes that any required shade tree cannot be planted on the affected property because sufficient open surface area is not available or for any other reason, the applicant must pay into the Tree Canopy Conservation Account a fee for each required shade tree

that is not planted on the affected property. The fee must be equal to the applicable rate the Department sets for bonding trees in the right-of-way.

#### **55-7. Submissions.**

(a) Required submissions. A person subject to this Chapter must submit to the Director the following information with each application for a sediment control permit:

(1) a plan delineating:

(A) the property boundaries;

(B) the proposed limits of disturbance, including any off-site areas;

(C) any shade tree planting locations and the required open surface area for each planting location;

(2) a table summarizing:

(A) the square footage of the property;

(B) the square footage of the limits of disturbance of the proposed activity;

(C) the number of shade trees required under Section 55-6(b), the number of shade trees to be planted, and the amount of fees to be paid under Section 55-6(d); and

(D) the open surface area surrounding each shade tree planting location; and

(3) any additional information specified by regulation.

(b) Qualification of preparer. A professional engineer, land surveyor, architect, or other person qualified to certify an erosion and sediment control plan under Chapter 19 is also qualified to submit the information required under this Chapter.



- 616       (c) Incomplete submissions. The Director must not accept an incomplete  
617       submission.
- 618       (d) Review of submissions. Each submission required under this Chapter  
619       must be reviewed along with any submission required under Article I of  
620       Chapter 19.
- 621       (e) Coordination of review. The Director may coordinate the review of any  
622       information submitted under subsection (a) with one or more other  
623       agencies as appropriate. If the Director coordinates the review with  
624       other agencies, the reviews must be performed concurrently and in  
625       accordance with any review coordination required under Chapter 19.
- 626       (f) Issuance of sediment control permit. The Director must not issue a  
627       sediment control permit to a person that is subject to this Chapter until:
- 628           (1) the Director has approved the applicant's planting plan;  
629           (2) the applicant pays any fee required under this Article; and  
630           (3) the applicant has satisfied all applicable requirements under  
631           Article I of Chapter 19.
- 632       (g) Validity period. An approved shade tree planting plan remains valid for  
633       the length of the associated sediment control permit.
- 634       (h) Application requirement. To prevent circumvention of this Chapter,  
635       the Director may require a person to apply for a sediment control  
636       permit if that person limits the removal of tree canopy or limits land  
637       disturbing or construction activities below the requirements for a  
638       sediment control permit and within the next 10 years disturbs  
639       additional tree canopy or land on the same property, or conducts other  
640       activities, such that in the aggregate a sediment control permit would  
641       have been required.

## 642       55-8. Inspections.

- (a) Permission to gain access. The Director may enter any property permitted under this Chapter to inspect the property and enforce this Chapter while the permit is in effect.
- (b) Plan to be on site; field markings. A copy of the approved limits of disturbance, including [[shade tree species,]] planting locations and minimum open surface areas, must be available on the site for inspection by the Director. Field markings must exist on site before and during installation of all newly planted shade trees, sediment and erosion control measures, construction, or other land disturbing activities.
- (c) Inspections. The Director must conduct field inspections for any activity subject to this Chapter along with any inspection required for a sediment control permit under Article I of Chapter 19. The Director may authorize additional inspections or meetings as necessary to administer this Chapter.
- (d) Timing of inspections. The inspections required under this Section must occur after all construction activities are completed to determine the level of compliance with shade tree planting requirements.

### Article 3. Administration.

#### 55-9. General.

- (a) Regulations. Except as otherwise provided, the County Executive must adopt regulations, including a technical manual, to administer this Chapter, under Method 2.
- (b) Technical manual. The technical manual must include guidance and methods to:
- (1) preserve trees onsite where possible;

~~[(1)]~~ (2) identify, map, and evaluate the suitability of planting site locations, including acceptable shapes of open surface areas and the use of County rights-of-way;

~~[(2)]~~ (3) identify criteria for acceptable species, sizes, and health of newly planted shade trees;

~~[(3)]~~ (4) identify criteria for acceptable installation techniques; and

~~[(4)]~~ (5) otherwise comply with program requirements, consistent with this Chapter and applicable regulations.

(c) Administrative fee. The County Executive may, by Method 2 regulation, adopt a schedule of fees to administer this Chapter.

(d) Reports. On or before March 1 of each year, the Directors of Permitting Services and Environmental Protection must jointly submit an annual report on the County shade tree planting program to the County Council and County Executive.

(e) Comprehensive planting plan. The Director of Environmental Protection must adopt and maintain a comprehensive County-wide shade tree planting plan to specify appropriate uses for funds in the Tree Canopy Conservation Account. The Director should develop the plan after consulting other County agencies and the Planning Department.

(f) Survival and mortality analysis. The Department of Environmental Protection must collect data on shade trees planted under this Chapter, and those planted under other programs, to evaluate and provide guidance to the County's tree canopy programs.

(g) Tree canopy plan. The Director of Environmental Protection, after consulting other County agencies, the Planning Department, the Forest Conservation Advisory Committee, organizations representing

development and environmental interests, and the public, must propose to the Executive and Council recommendations regarding:

(1) tree canopy goals for the County; and

(2) a comprehensive strategy to increase the number of trees planted in the County.

**55-10. Tree Canopy Conservation Account.**

(a) Established. A Department assigned by the Executive must create a County Tree Canopy Conservation Account. The Account must be used as provided in this Chapter and the adopted operating budget.

(b) Use of funds. The assigned Department must use funds deposited in the Tree Canopy Conservation Account only to plant and maintain shade trees, including costs directly related to site identification, preparation, and other activities that increase tree canopy. Funds deposited into the Account must not revert to the General Fund and must not be used to hire additional County staff or to supplant funds otherwise appropriated to plant and maintain shade trees and enhance tree canopy.

(c) Fines. Any fine collected for noncompliance with shade tree planting requirements must be deposited in a separate account in the Tree Canopy Conservation Account and must be used to administer this Chapter.

(d) Plantings.

(1) Shade trees native to the Piedmont area of the County should be used, if feasible, to meet the mitigation requirements of this Chapter.

(2) The planting of shade trees under this Chapter must occur in the subwatershed where the project is located, if feasible. Otherwise the shade trees may be planted anywhere in the County.

(3) In planting trees under this paragraph, the assigned Department must give highest priority to those areas of the County, such as central business districts and other urban and suburban areas, that have relatively low tree canopy coverage.

**55-11. Enforcement.**

(a) Compliance. The Director may issue a notice of violation, corrective order, stop-work order, or civil citation to any person that causes or allows a violation of this Chapter.

(b) Civil penalty. A violation of this Chapter is a Class A violation. The maximum civil penalty for any violation of this Chapter or any regulation adopted under this Chapter is \$1,000. Each day that a violation continues is a separate offense.

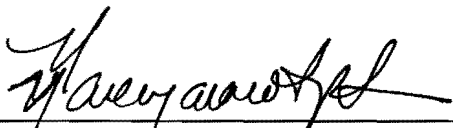
**Sec. 2. Effective date; transition.**

This Act takes effect on March 1, 2014. County Code Chapter 55, as inserted by this Act, does not apply to any application for a sediment control permit that is accepted by the Director of Permitting Services before that date.

739 *Approved:*

740

741



7/26/13

742 Nancy Navarro, President, County Council

Date

743 *Approved:*

744

745

746 Isiah Leggett, County Executive

Date

747 *This is a correct copy of Council action.*

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749

750 Linda M. Lauer, Clerk of the Council

Date